IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No.40 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA Sd/-
and
HON'BLE MS.JUSTICE H.N.DEVANI Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF INCOME-TAX

Versus

KLIN PRODUCTS PVT LTD

Appearance:
MR MANISH R BHATT for Applicant No. 1
NOTICE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

Date of decision: 17/02/2005

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

1. The following question has been referred for the opinion of this Court under Section 256(2) of the Income

Tax Act, 1961 (the Act) at the instance of the Commissioner of Income-tax, Rajkot by the Income-tax Appellant Tribunal, Ahmedabad Bench 'B'.

"Whether, the Appellate Tribunal is right in law and on facts in allowing the claim u/s.33B of the Income-tax Act in respect of the amount claimed as terminal allowance u/s.32(1)(iii) of the I.T.Act, 1961 ?"

2. The Assessment Year is 1981-82 and the relevant accounting period is 30th June, 1980. The claim of the assessee for rehabilitation allowance under Section 33B of the Act was negatived by the Assessing Officer. The assessee carried the matter in appeal before the CIT (Appeals) who, for the reasons stated in his order dated 2nd April, 1985, upheld the claim but worked out the quantum of allowance in the following manner :

(i) Written down value (after excluding the assets written off) Rs.483021

(ii) 60% of the same Rs.289812

(iii) 60% of this amounts eligible for claim as Rehabilitation allowance under Sec.32(1)(iii) Rs.173886

(iv)a) The terminal allowance of the value of the assets written off eligible under s.32(1)(iii) Rs.62300

b) 60% of this amount is Rs.37380 Rs.37380

Total amount eligible for deduction u/s.33B Rs.211266

3. The Revenue carried the matter in appeal before the Tribunal. The Tribunal, for the reasons stated in its order dated 29th June 1987, accepted the claim of the assessee in principal but restricted the disallowance to Rs.37,380/- by working out the same as under :-

(iv)a) The terminal allowance of the value of the assets written off eligible under s.32(1)(iii) Rs.62300

b) 60% of this amount is Rs.37380 Rs.37380

Thus, in effect, the Tribunal partly allowed the appeal filed by the Revenue.

4. It appears that the assessee challenged the remaining portion of disallowance whereby the Tribunal had reversed the order of CIT (Appeals) by way of Income Tax Reference No.120 of 1989. The said matter has been decided by this Court on 22nd January, 2003 and is reported at [2003] 261 ITR 338. This Court has allowed the reference at the instance of the assessee holding that the Tribunal was not right in withdrawing the entire rehabilitation allowance of Rs.1,73,886/- granted by the CIT (Appeals) under Section 33B of the Act without working out the amount of deduction on the basis of formula, namely, the written down value minus the "moneys payable" and "scrap value", if any, as contemplated by Section 32(1)(iii) of the Act, which was applicable even in respect of the assets extensively damaged leading to discontinuance of business under Section 33B, for ascertaining the rehabilitation allowance of 60% of the amount of deduction so worked out.

5. Mr.M.R.Bhatt, learned Senior Standing Counsel, appears for the applicant - Revenue. He has very fairly submitted that the controversy in the present reference stands concluded by the aforesaid decision of this Court in assessee's own case for the same assessment year. Though served there is no appearance on behalf of the respondent assessee.

6. In light of the aforesaid fact situation, it is not necessary to set out either the facts or contentions in detail as they already appear in the aforesaid reported decision. In the circumstances, the question referred is answered in the affirmative i.e. in favour of the assessee and against the Revenue.

7. The Reference stands disposed of. There shall be no order as to costs.

Sd/- Sd/-

[D.A.MEHTA,J] [H.N.DEVANI,J]

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